

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

BILLY R. ARMSTRONG

PETITIONER

VERSUS

CIVIL ACTION NO. 4:06cv118TSL-JCS

DALE CASKEY, Warden

RESPONDENT

ORDER

This matter comes before this court, sua sponte, for consideration of the transfer of this cause. The petitioner, an inmate currently incarcerated in the East Mississippi Correctional Facility, Meridian, Mississippi, filed this request for habeas corpus relief pursuant to 28 U.S.C. § 2254.

Petitioner states that on March 20, 1996, he was convicted of robbery with a deadly weapon in the Circuit Court of Lauderdale County, Mississippi. Petitioner was sentenced to serve 15 years in the custody of the Mississippi Department of Corrections.

The petitioner has previously filed for habeas relief in this court challenging the same conviction, Armstrong v. Jagers, No. 4:00cv96LN (S.D. Miss. June 19, 2002). On June 19, 2002, this court entered a final judgment which dismissed the action with prejudice. The petitioner filed a notice of appeal. On December 19, 2003, the United States Court of Appeals for the Fifth Circuit denied the petitioner's request for a certificate of appealability. See Armstrong v. Jagers, No. 03-60740 (5<sup>th</sup> Cir. Dec. 18, 2003).

A petitioner who is filing a second or successive motion for habeas relief must first apply to the appropriate court of appeals for an order authorizing the district court to consider the successive motion. 28 U.S.C. § 2244(b)(3)(A). In the case at bar, the petitioner has failed to submit any documentation demonstrating that he has obtained the required authorization from the United States Court of Appeals for the Fifth Circuit. Therefore, this court has determined that in the interest of justice, this cause should be transferred to the United States Court of Appeals for the Fifth Circuit for a determination whether this successive or second petition should be allowed. See In Re Epps, 127 F.3d 364 (5th Cir. 1997); 28 U.S.C. § 1631. Accordingly, it is hereby,

ORDERED that this petition for habeas corpus relief be, and the same hereby is, transferred to the United States Court of Appeals for the Fifth Circuit.

IT IS FURTHER ORDERED that the clerk of this court is directed to close this case pending the decision of the United States Court of Appeals for the Fifth Circuit.

SO ORDERED, this the 15TH day of September, 2006.

/s/ Tom S. Lee  
UNITED STATES DISTRICT JUDGE